

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
August 3, 1993

In the Matter of
Joy R. Klingaman, President
Esprit, A Condominium
Complainant

Vs.

Board of Directors
Waters Landing Association, Inc.
Respondent

Case No. 149-G

Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing, on May 26, 1993, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended. Both sides presented evidence at the hearing, and the case file (including the recorded documents of both the Waters Landing Association and the Esprit Condominium, but excluding the investigative summary) and the marked exhibits were admitted into evidence, and issues on production of documents were resolved to the satisfaction of both parties through stipulations; whereupon, the panel makes the following findings of fact and conclusions of law and issues the following Order:

FINDINGS OF FACTS

1. On December 23, 1991, Joy Klingaman, on behalf of herself (hereinafter the "Complainant")¹ filed a formal dispute with the Office of Common Ownership Communities. Complainant alleged that the Waters Landing Association (hereinafter the "Respondent") improperly assessed a monthly accounting fee, which began in the amount of \$2.90, upon the owners of all of the condominium units at Esprit Condominium, in addition to the monthly general assessment, for the sole purpose of reimbursing Waters Landing Association for the costs of collecting Waters Landing Association dues directly from the owners of the Esprit Condominium. Specifically, the Complainant contends that the Respondent improperly imposed neighborhood assessments against only the owners of units of the Esprit Condominium in violation of Article II, Sections 2, 3, and 4

¹Esprit Condominium was withdrawn as a party to these proceedings at the hearing.

of the Waters Landing Association Declaration and Article VII, Section 3 of the Waters Landing Association By-Laws, and that the cost of collecting assessments from Esprit Condominium should have properly been paid out of the general assessments of Waters Landing Association, Inc.

2. Esprit Condominium is part of the Waters Landing Association, and both entities are in the Churchill Foundation (hereinafter "Foundation").

3. The Complainant sought an order for Respondent to cease collection of a neighborhood assessment against the owners of units at the Esprit Condominium to reimburse Waters Landing Association for the costs of collecting the assessments from members of the Esprit Condominium, and for Respondent to remit the additional amount collected since 1991 for the costs of collecting such monthly assessments.

4. The Respondent, Waters Landing Association, denied all allegations of the Complainant and further stated that the assessments were adopted in accordance with all required procedures and were properly assessed against the owners of the units at the Esprit Condominium due to the increased costs of providing services to them in collecting their fees directly from the unit owners, as opposed to collecting the amount in a lump sum from the Esprit Condominium, and therefore were properly assessable against these unit owners of Esprit Condominium as a Neighborhood Assessment under the documents.

5. The Commission took jurisdiction over this matter to allow this hearing to take place under the provisions of Section 10B-13 of the Montgomery County Code, in order that the facts could be ascertained from the parties to the dispute.

6. On the hearing record, both the parties presented their cases. The issue to be decided by the panel was whether the Waters Landing Association properly assessed only the members of Esprit Condominium to defray costs incurred by Waters Landing Association in collecting the assessments from the unit owners of Esprit Condominium, or whether such costs of collection were administrative costs which should have been recouped as a part of the general assessment upon all unit owners in Waters Landing Association.

7. The panel finds that the documents of both Esprit Condominium and Waters Landing Association contain the following provisions:

a) The Waters Landing Association Declaration states in pertinent part as follows:

i) Article V, Section 1(b) includes "the cost of necessary management and administration" as part of the general assessments.

ii) Article V, Section 1 requires notice of assessments to be sent to all members of Waters Landing Association.

iii) Article V, Section 2, entitled "Neighborhood Assessment" provides that an owner "shall be deemed to covenant and agree to pay to the Association a Neighborhood Assessment, which assessment shall be determined in accordance with the provisions of the Supplementary Declaration...".

iv) Article V, Section 3 requires that the assessments for units in the Churchill Foundation shall be collected by the Waters Landing Association and shall be paid over to that Foundation.

v) Article V, Section 6, involving non-payment of the assessment, states that the assessments are personal obligations of the member, that failure to pay subjects the lot of the unit owner to a lien, that the names of the delinquent homeowners may be posted, and indicates other remedies of which Waters Landing Association may avail itself in the event of a delinquency.

vi) Article V, Section 10 provides that failure to pay the assessment to the Association constitutes a default in the unit owner's mortgage.

b) The Waters Landing Association ByLaws provide in Article VII, Section 3 entitled "Neighborhood Budget", that "The Neighborhood Council shall adopt an Neighborhood Budget on an annual basis, following the initial budget determined by the Board of Directors. Such budget shall reflect the cost of operating and maintaining the Neighborhood Facilities, as determined by the Neighborhood's Supplementary Declaration. The Council shall recommend the budget adopted to the Board of Directors which, in turn, shall determine the Neighborhood Assessments upon the basis of such budget." (emphasis added)

c) The Bylaws of the Esprit Condominium provide as follows:

i) Article V, Section 3(b) states that the powers of the Board of Directors include "to provide for the establishment, collection, use, and expenditure of assessments and carrying charges from the unit owners..."

ii) Article VIII provides in Section 1 that each owner "shall pay to the Council of Unit Owners, in advance, a monthly sum (hereinelsewhere sometimes referred to as "assessments" or "carrying charges") when assessed, equal to one-twelfth (1/12th) of the unit owner's proportionate share...to meet its annual expenses..."

d) The Waters Landing Association Supplemental Declaration of Covenants and Restrictions includes in paragraph 2 entitled "Neighborhood Assessments" the following: "Each lot within the Subject Property shall be deemed subject to a covenant running with the land requiring the owner of each Lot in the Subject Property to pay a pro rata share, effecting a fair and equitable allocation of financial responsibilities for facilities or services to be used or enjoyed by owners of the Subject Property as distinguished from the owners of other properties subject to the Declaration. Such Neighborhood Assessments shall be imposed in accordance with the provisions of Article V, Section 2 of the Declaration."

CONCLUSIONS OF LAW

1. The panel finds that the "Neighborhood Budget" provisions provide for the payment by the neighborhood for additional costs in maintaining the "Neighborhood Facilities", not for additional costs incurred by the Waters Landing Association in carrying out its own administrative duties. Based upon the evidence presented, the panel further finds that Neighborhood Assessments levied by Waters Landing Association, relate solely to property maintenance and operation, except those for collection costs.

2. The panel finds that it is the unit owners who have the personal obligation to the Waters Landing Association to pay an assessment, with no provision in any documents for collection of assessments by the Esprit Condominium. Conversely, the panel finds that Waters Landing Association is obligated to collect assessments from the units in the Churchill Foundation. Members of Esprit Condominium are entitled to pay their assessments directly to the party collecting those assessments without incurring additional costs for doing so. Therefore, the panel finds that the portion of the assessments being charged by Waters Landing Association for the costs of collecting assessments against the unit owners of Esprit Condominium are not properly assessable as "Neighborhood Assessments" against Esprit Condominium owners alone.

3. The panel finds that only those services attributable to neighborhood facilities may be assessed directly against those who are owners in those neighborhoods. Costs for administrative and management services in collecting assessments are to be apportioned against all of the members of the Waters Landing Association. The Esprit Condominium Bylaws definition of the term "annual expenses" does not encompass the cost of operating any umbrella association to collect assessments from the members of Esprit Condominium.

4. In addition, the panel finds that all of those entities which perform administrative services such as the collection of assessments for Waters Landing Association, whether they be third party entities or entities within Waters Landing Association, may be paid or receive a credit for the reasonable value of services

performed for Waters Landing Association. A reasonable value for the services may be determined by the costs charged by others for providing the same services to Waters Landing Association. Thus, while the full cost of collecting the assessments must be assessed against all those subject to assessment from Waters Landing Association, those entities within Waters Landing Association who perform services for Waters Landing Association in collecting those debts can be given a credit for the costs of the collection that would otherwise have been required to be paid to a third party by Waters Landing Association.

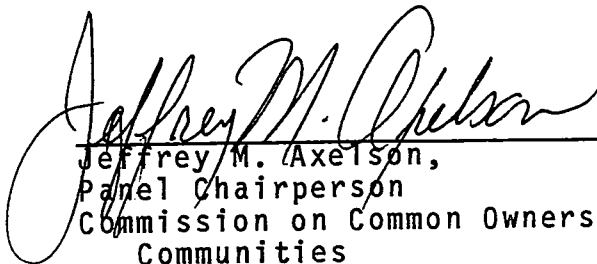
WHEREFORE, it is hereby

ORDERED that the Waters Landing Association may only include the cost of collecting assessments as an administrative service in the budget assessed against all owners, but not as a Neighborhood Assessment against specific neighborhoods. Credit may be given, or fees paid, to those entities which carry out the collection duties for the Waters Landing Association. All other provisions of the governing documents for the collection of delinquent assessments are not affected by this order. It is further,

ORDERED, that due to the length of time during which the procedural error has been committed and that during this time the cost of collecting assessments has been treated as a Neighborhood Assessment levied against specific neighborhoods rather than as an administrative expense assessed against all owners, it is determined that this Order shall be prospective only, and operate and be effective beginning in the next fiscal year of the Waters Landing Association.

The foregoing was concurred in by panel members Axelson, Blumberg, and Fox.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within 30 days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.



Jeffrey M. Axelson,
Panel Chairperson
Commission on Common Ownership
Communities